

Date: November 7, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor



Agenda Item No. 8(N)(3)

Resolution No. R-991-23

Subject: Contract Award Recommendation for Department of Transportation and Public Works (DTPW) Professional Services Agreement, Project No. E20-PROS-03, for Rickenbacker Causeway Bond Engineering Services

Executive Summary

On March 7, 2023, the Board of County Commissioners (Board) adopted Resolution No. R-181-23 approving a non-exclusive Professional Services Agreement (PSA) for Rickenbacker Causeway Bond Engineering Services. The services to be provided through the PSA correspond to those required in Bond Ordinance No. 13-110, Sections 208, 405, 510, 702, 704, and 712. It was noted, however, at the time that the resolution was brought before the Board, the contract document contained an error within pages 10 and 11 of the PSA. This error pertains to the consultant's compensation rate and requires correction to obtain the requisite professional services. The attached contract establishes the maximum rate of compensation for the consultant, inclusive of multipliers of direct salary, as \$280 per hour. The previously listed maximum rate of compensation, also inclusive of multipliers, was \$98 per hour. Additionally, the updated contract specifies that rates for technical experts and specialty consultant services shall be negotiated by the Director of the Department of Transportation and Public Works (DTPW) or the Director's designee. This change does not change the total contract amount that was previously approved by the Board.

Therefore, it recommended that the Board rescind Resolution No. 181-23 and approve the enclosed contract, which is the final and fully negotiated PSA executed by the consultant. This item, upon approval, will allow for the execution of a contract with HNTB Corporation in an amount of \$2,200,000, establishing one non-exclusive PSA for Rickenbacker Causeway Bond Engineering Services for a five-year term. The services of a bond engineer are required as part of each bond agreement and associated financing documents. These services are to include performing annual inspections of the physical conditions of the Rickenbacker Causeway and related facilities and prepare separate reports of the physical condition of the roadway, bridges and toll facilities, including a detailed mile-by-mile visual inspection of the roadway, bridges, and sidewalks. Following a competitive procurement, HNTB was the highest-rated respondent.

Recommendation

It is recommended that the Board rescind Resolution No. 181-23 and approve the attached PSA for Rickenbacker Causeway Bond Engineering Services, *Contract No. E20-PROS-03*, between HNTB Corporation and the County for \$2,200,000 for a five-year term. The change is required as a result of the prior contract incorporating the consultant's maximum raw hourly rate in place of the fully loaded rate within the document. This item has been prepared by the Parks, Recreation and Open Spaces Department (PROS) on behalf of DTPW.

Delegation of Authority

The authority of the County Mayor or County Mayor's designee to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County, including the authority to exercise termination provisions.

Scope

PROJECT

NAME: Rickenbacker Causeway Bond Engineering Services

PROJECT NO: E20-PROS-03

CONTRACT NO: E20-PROS-03

PROJECT

DESCRIPTION: DTPW has the need to establish one non-exclusive PSA to provide professional bond engineering services from one qualified consultant to fulfill and perform the services of a bond engineer as set forth in Bond Ordinance No. 13-110, Sections 208, 405, 510, 702, 704, and 712. The services of a bond engineer are required as part of each bond agreement and associated financing documents. The independent Consulting Engineer is required to act on behalf of the bondholders to execute a scope of service that consists of the following:

- Perform traffic engineering consulting services and review of the Rickenbacker Causeway's toll revenue transactions and capabilities, engineering decisions, and future plans.
- Review annual facility inspection reports (2019) of all the Rickenbacker Causeway and related facilities.
- The Consulting Engineer shall prepare, when requested by the department, the certificate required in Section 208(a)(ii) of Bond Ordinance No. 13-110 in accordance with the requirements of such subsection (a); and the report described in Section 501 of said Bond Ordinance.
- Make recommendations for remedial action, if warranted, after each inspection of the Rickenbacker Causeway facilities.
- Perform annual inspections of the physical conditions of the Rickenbacker Causeway and related facilities and prepare separate reports of the physical condition of the roadway, bridges and toll facilities to include the following:
 - Conduct a detailed mile-by-mile visual inspection of the roadway, bridges, sidewalks, shoreline and public access beaches, drainage

structures and all appurtenances thereto such as lighting, signage, pavement striping, and marking, entry and exit gates, toll plaza structures, buildings, public restrooms, and toll equipment. As a part of this inspection, photographs will be taken of problem areas that the Consulting Engineer recommends need continuous monitoring and/or corrective action.

- Conduct, at minimum, a yearly structural inspection of bridges and submit the completed Consulting Engineer's inspection forms to DTPW along with the annual report that will summarize the Consulting Engineer's opinions concerning the conditions of the facilities.
 - Inspect structures located within the Rickenbacker Causeway inventory (Exhibit A) in compliance with applicable federal regulations such as the National Bridge Inspection Standards, Code of Federal Regulations (CFR), Title 23, Part 650, Subpart C; Title XXVI, Section 335.074, Florida Statutes; State of Florida Department of Transportation Rules Chapter 14-48.0011, F.A.C., Inspection Bridges; and OSHA 29 CFR, Part 1926, Subpart C.
- Review the latest available bridge inspection reports prepared by the Florida Department of Transportation (FDOT) and any other agency.
 - Generate recommendations, approvals, and/or certifications as required in the Bond Ordinance.
 - Conduct annual Traffic and Revenue Study of Rickenbacker Causeway.
 - Review and analyze, on a regular basis, DTPW's monthly traffic revenue and expense statements for the Rickenbacker Causeway toll facility, as well as other traffic reports, information and data furnished by DTPW.
 - Prepare and submit to DTPW bi-yearly reports of the traffic, operation and revenue aspects of the Rickenbacker Causeway toll facility; the reports shall compare the results of the current year's operation with the previous year's operation, as well as the forecasts contained in the Official Statement of Series 2013 Bonds or successors for the toll facility.
 - Conduct an annual inspection of beach erosion on the improved beaches within the public rights of way on Hobie Island and Virginia Key and provide recommendations for corrective actions.
 - Provide expert testimony in judicial or quasi-judicial proceedings regarding toll revenues and existing or proposed revenue producing facilities.

- Make recommendations for advisable revisions or modifications of the amount that should be deposited on an annual basis into the Renewal, Replacement, and Improvement Fund in accordance with Section 704 of the Bond Ordinance for inclusion in the Annual Budget for the bridge and toll facilities.
- Make recommendations on the amount of insurance that DTPW should carry to cover replacement costs arising from damage to or destruction of part or all of the transportation facilities as defined by the Resolution in accordance with Section 706 of the Bond Ordinance and subsequent supplemental resolutions.
- Prepare a Consulting Engineer's Report setting forth the findings by review of reports and site observations whether the Rickenbacker Causeway has been maintained in good repair and working order, as well as provide advice on proper maintenance and operation.
- Attend meetings with DTPW staff, the Miami Dade County Bridge Engineer, consulting engineers, officials of the Bond Finance Committee or any other person(s) as deemed necessary by DTPW upon request.
- Provide general engineering support for the Rickenbacker Causeway as needed, including, but not limited to, future bond feasibility report services, origin and destination studies, traffic surveys, financial feasibility study, and toll rate structure study.
- The consultant will report to the DTPW Project Manager along with the Miami-Dade County Bridge Engineer.

**PROJECT
LOCATION:** Rickenbacker Causeway

PROJECT SITES:	<u>SITE #</u>	<u>LOCATION 1</u>	<u>DIST</u>	<u>ESTIMATE</u>	<u>T-S-R</u>
	N/A	Rickenbacker Causeway	7	\$2,200,000	--

**PRIMARY
COMMISSION
DISTRICT:** District 7

**APPROVAL
PATH:** Board of County
Commissioners

**USING
DEPARTMENT:** Transportation and Public Works

MANAGING

DEPARTMENT: Transportation and Public Works

Fiscal Impact / Funding Source

FUNDING SOURCES:	<u>SOURCE</u>	<u>PROJECT NUM</u>	<u>AMOUNT</u>
	Rickenbacker CSWY Funds	N/A	\$2,200,000.00

**OPERATIONS
COST IMPACT /
FUNDING:** Not Applicable

**MAINTENANCE
COST IMPACT /
FUNDING:** Not Applicable

**LIFE
EXPECTANCY OF
ASSET:** Not Applicable

PTP FUNDING: No

GOB FUNDING: No

ARRA FUNDING: No

CAPITAL BUDGET PROJECTS:	CAPITAL BUDGET PROJECT # - DESCRIPTION	<u>AWARD ESTIMATE</u>
	N/A	
	Non-CAPITAL BUDGET PROJECTS TOTAL:	\$2,200,000.00

PROJECT TECHNICAL CERTIFICATION REQUIREMENTS:	TYPE	CODE	DESCRIPTION
	PRIME	3.02	Highway Systems - Major Highway Design
	PRIME	3.03	Highway Systems - Bridge Design
	Sub	3.04	Highway Systems - Traffic Engineering Studies
	Sub	3.09	Highway Systems - Signing, Pavement Marking, and Channelization
	Sub	3.12	Highway Systems - Underwater Engineering Inspection
	Sub	16.00	General Civil Engineering

**NTPC
DOWNLOADED:** 14

BIDS RECEIVED: 6

CONTRACT PERIOD: 1825 Days – Excludes Warranty Administration Period.
This Agreement shall remain in full force and in effect for five years after its date of execution or until completion of all project phases, whichever occurs last, unless terminated by mutual consent of parties hereto.

CONTINGENCY PERIOD: N/A

IG FEE INCLUDED IN BASE CONTRACT: No

ART IN PUBLIC PLACES: No

BASE ESTIMATE: \$2,000,000.00

BASE CONTRACT AMOUNT: \$2,000,000.00

CONTINGENCY ALLOWANCE (SECTION 2-8.1 MIAMI DADE COUNTY CODE):	TYPE	PERCENT	AMOUNT	COMMENT
	PSA	10%	\$200,000.00	

TOTAL DEDICATED ALLOWANCE: \$ 0.00

TOTAL AMOUNT: \$2,200,000.00

Track Record / Monitor

SBD HISTORY OF VIOLATIONS: None

EXPLANATION: The Request to Advertise (RTA) was filed with Clerk of the Board (COB) on April 16, 2021. A total of five proposals were received on August 2, 2021. On September 10, 2021, the County Attorney's Office deemed Jacobs Engineering Group, Inc.'s proposal non-responsive per Addendum No. 2. Jacobs took issue with a material portion of the solicitation by asserting that it will not provide a service required by the scope of work. Consequently,

Jacobs Engineering Group, Inc.'s proposal was not evaluated by the Competitive Selection Committee (CSC) (See Attachment, "County Attorney's Responsiveness Determination"). On September 22, 2021, the Internal Services Department's Small Business Development Division (SBD) evaluated four firms that were deemed compliant.

On October 29, 2021, at the First-Tier meeting, the CSC evaluated all responsive and responsible proposals and deemed the information sufficient to determine the qualifications of the teams. By majority vote, the CSC decided to forego Second-Tier proceedings and recommended the following firms, in order of preference, for negotiation of four PSAs:

RANKING OF RESPONDENTS

HNTB Corporation

Final Ranking – 1

Total Adjusted Ordinal Score – 3

Total Adjusted Qualitative Points – 264

The following firms will serve as alternates:

EAC Consulting Inc.

Final Ranking – 2

Total Adjusted Ordinal Score – 8

Total Adjusted Qualitative Points – 244

EXP US Services, Inc.

Final Ranking – 3

Total Adjusted Ordinal Score – 8

Total Adjusted Qualitative Points – 250

CDM Smith, Inc.

Final Ranking – 4

Total Adjusted Ordinal Score – 10

Total Adjusted Qualitative Points – 244

The Negotiation Committee was approved by the County Mayor's designee on November 18, 2021. The Committee negotiated with the top ranked firm, HNTB Corporation, on December 8, 2021, and concluded on December 12, 2021. The Negotiation Committee reached a consensus to finalize negotiations on December 22, 2021.

SUBMITTAL

DATE: 08/02/2021

ESTIMATED

NOTICE TO

PROCEED: 07/20/2022

PRIME

CONSULTANT: HTNB Corporation

COMPANY

PRINCIPAL: Leonard Becker, Senior Vice President

COMPANY

QUALIFIERS: Albert Hernandez

COMPANY

EMAIL ADDRESS: lebecker@HNTB.com

COMPANY

STREET

ADDRESS: 161 NW 6 Street, Suite 1000

COMPANY CITY-

STATE-ZIP: Miami, FL 33136

YEARS IN

BUSINESS: 26

PREVIOUS

CONTRACTS

WITH COUNTY IN

THE LAST FIVE

YEARS: Two contracts with a total of \$20,759,762.00

SUB

CONTRACTORS

AND SUPPLIERS

(SECTION 10-34

MIAMI DADE

COUNTY CODE): E-Science, Inc; Goal Associates, Inc; and Collins Engineering, Inc.

MINIMUM

QUALIFICATIONS

EXCEED LEGAL

REQUIREMENTS: N/A

STANDARD

PAYMENT AND

PERFORMANCE

BOND: Yes

SBD REVIEW

COMMITTEE: **MEETING DATE:** 05/21/2021 **SIGNOFF DATE:** 06/15/2021

APPLICABLE

WAGES: Yes

**(RESOLUTION No.
R-54-10)**

REVIEW COMMITTEE ASSIGNED CONTRACT MEASURES:	<u>TYPE</u>	<u>GOAL</u>	<u>COMMENT</u>
	CSBE	16%	See Attachment 5
	CWP	0.00%	Not Applicable

**MANDATORY
CLEARING
HOUSE:**

Yes

**CONTRACT
MANAGER NAME**

/ PHONE / EMAIL: Ryan Fisher 305-469-5264 Ryan.Fisher@miamidade.gov

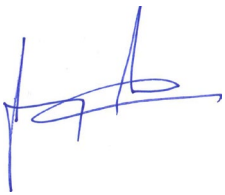
**PROJECT
MANAGER NAME**

/ PHONE / EMAIL: Lin Li 786-469-5266 Lin.Li@miamidade.gov

Background

BACKGROUND:

The Rickenbacker Causeway consists of approximately 1.2 miles of bridge structures – the West Bridge, the William Powell Bridge, and the Bear Cut Bridge and approximately 2.4 miles of roadway built on dredged fill with a toll facility at the western terminus. It has been operated as a toll road since its original opening in 1947 and is currently a one-way tolling facility.



Jimmy Morales, Chief Operations Officer

EXHIBIT A
Parks, Recreation and Open Spaces Department
Rickenbacker Causeway Structure Inventory

Rickenbacker Toll Plaza

Administration Building
2601 Brickell Avenue, Miami Florida - 33129
Built 1985
Toll Plaza
Toll collection equipment

West bridge # 874541(Eastbound) and # 874542 (Westbound)

874541 North portion built 1944. Rehabilitated 2014.
874541 South portion widened 1985.
874542 Built 1985.

William Powell Bridge # 874545

Built 1985,

Bear Cut Bridge # 874544

North portion built 1944. Rehabilitated 2014
South portion widened 1985.

East Fishing Pier (old bay bridge) # 874543
(underwater soundings)
(fender system & lighting)

Maintenance Operations Building

4299 Rickenbacker Causeway, Key Biscayne Florida - 33149
Built 1954

Comfort Station #1 (Hobie Island)

Comfort Station #2 (Virginia Key Beach south side)

Comfort Station #3 (Bear Cut Bridge)

Roadway Pavement and Markings
Regulation Buoy Line System (36 buoys)
Drainage
Guardrail
Beach Access Gates
Concession Site Pads
Streetlights
Digital Speed Signs
Regulation Signage
Multi-Use Pedestrian Pathways
Parking Lots
Beach Sand and Dunes
Landscape

Memorandum



Date: September 10, 2021

To: Justin Espagnol
A&E Consultant Selection Coordinator
Internal Services Department

From: Melanie Spencer and Miguel Gonzalez
Assistant County Attorneys

Subject: Request for Responsiveness Determination on ISD Project No.:E20-PROS-03
Rickenbacker Causeway Bond Engineering Services

You have asked this office if a proposal submitted by Jacobs Engineering Group, Inc's (Jacobs) in response to the Notice to Professional Consultants ("Solicitation") issued by the Internal Services Department for ISD Project No. E20-PROS-03 Rickenbacker Causeway Bond Engineering Services is responsive. We rely on the information provided to this office in your August 16, 2021, memorandum and attached materials as related to the Solicitation.

BACKGROUND

The Solicitation sought an engineering and specialty consultant team to provide professional bond engineering services to fulfill and perform the services of a bond engineer as set forth in Bond Ordinance No. 13-110. On August 2, 2021, five (5) proposals were received in response to the Solicitation.

The Scope of Services in Section 1.3 of the Solicitation requires that the successful proposer "[p]rovide expert testimony in judicial or quasi-judicial proceedings regarding toll revenues and existing or proposed revenue producing facilities." This requirement was also clarified in Answer 2 of Addendum No. 2 as follows:

Q2: The RFP Scope requests the successful bidder to: Provide expert testimony in judicial or quasi-judicial proceedings regarding toll revenues and existing or proposed revenue producing facilities. (page 15 or p 7 of 26; bullets 15) Has the County (and Bond Engineer) ever had to attend a judicial or quasi-judicial proceeding for this bond engineering contract in the past? Can you confirm that the testimony would only be related to defending the technical work product related to the bond engineering scope and not to any other issues related to the bridge (such as auto accidents, etc.). Do you expect the proceedings where the expert testimony is provided to be in civil or criminal court and adversarial in nature, or would they be more of an administrative process and of informative/technical nature?

The County responded as follows: A2: The County has never had to attend a judicial or quasi-judicial proceeding for this bond engineering contract in the past but, it may need to in the future. Yes, PROS can confirm that the testimony would only be related to defending the

technical work product related to the bond engineering scope and not to any other issues related to the bridge (such as auto accidents, etc.). PROS expects the proceedings to be more of an administrative process and of an informative and technical nature.

As part of its proposal Jacobs provided a section entitled "addendum" and stated:

Jacobs Engineering Group Inc. ("Jacobs") proposed scope of work for MDC's bond engineering services possess the following assumptions: 1) Section 1.3 Scope of Services and Terms (p 14, bullet 15) Provide expert testimony in judicial or quasi-judicial proceedings regarding toll revenues and existing or proposed revenue producing facilities. Jacobs scope regarding "expert testimony" in connection with toll revenues and existing or proposed revenue producing facilities shall include fact based support in assisting our MDC counterparts with presentation of the financials (e.g. bond certification) to internal MDC legislative authorities and committees (non-adversarial proceedings). This shall also include providing additional clarity on our work deliverables, recommendations, approvals, and/or certifications as required in the Bond Ordinance with the same aforementioned authorities. It does not include Jacobs' participation in judicial proceedings with a judge, magistrate, or court of law and providing opinion testimony as a qualified expert. However, where MDC requests of Jacobs to communicate directly with their law firm or that our work is subject to attorney-client or work product privilege, we will seek clarification as to Jacobs' prospective role.

DISCUSSION

The purpose of the competitive bidding process is, among other things, "to secure fair completion upon equal terms to all bidders . . . and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids." *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977). In general, a bid may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. *See Robinson Elec. Co. v. Dade Cnty*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). It is established that responses to a solicitation must be capable of assuring the County that, if accepted, the proposal will result in a contract that can be performed in accordance with the requirements of the solicitation. *See, e.g., Glatstein v. City of Miami*, 399 So. 2d 1005, 1007-08 (Fla. 3d DCA 1981). Proposers who propose impermissible exceptions to Solicitations do so at the risk of those exceptions being deemed material to the proposal and having their proposals rejected as non-responsive.

Jacobs' proposal is non-responsive as Jacobs has taken issue with a material portion of the Solicitation by asserting that it will not provide a service required by the scope of services in this Solicitation. We have been informed by staff that staff considers the provision of expert testimony in this Solicitation as a material portion of the scope of services. Jacobs taking of this major exception deprives the County of assurance that a contract will be entered into and performed in accordance with the requirements of the Solicitation. *Cf. Glatstein*, 399 So. 2d at 1007-08. Specifically, the County has

no assurance that if needed, Jacobs will "provide expert testimony in a judicial or quasi-judicial proceeding..."

Further, acceptance of Jacobs' proposal could undermine the competitive process as there may have been other potential proposers that were dissuaded from proposing based upon the inclusion of the expert testimony requirement. It is also important to note that the Solicitation was based upon qualifications to provide specific services to the County, and as such proposers were not entitled to take exception to the scope requested.

Accordingly, Jacobs' bid is non-responsive.


Miguel Gonzalez
Melanie Spencer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: November 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(3)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(N)(3)
11-7-23

RESOLUTION NO. R-991-23

RESOLUTION RESCINDING RESOLUTION NO. R-181-23
AND APPROVING PROFESSIONAL SERVICES
AGREEMENT BETWEEN MIAMI-DADE COUNTY AND
HNTB CORPORATION TO PROVIDE RICKENBACKER
CAUSEWAY BOND ENGINEERING SERVICES,
CONTRACT NO. E-20-PROS-03, IN AN AMOUNT NOT TO
EXCEED \$2,200,000.00 FOR A TERM OF FIVE YEARS;
AND AUTHORIZING THE COUNTY MAYOR OR
COUNTY MAYOR'S DESIGNEE TO EXECUTE THE
AGREEMENT AND TO EXERCISE THE PROVISIONS
CONTAINED THEREIN, INCLUDING TERMINATION
PROVISIONS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board rescinds Resolution No. R-181-23 and hereby approves the award of the Professional Services Agreement to HNTB Corporation for Rickenbacker Causeway Bond Engineering Services, Contract No. E-20-PROS-03 (the "Agreement"), in an amount not to exceed \$2,200,000.00 and for a term of five years, in substantially the form attached hereto and made a part hereof; and further authorizes the County Mayor or County Mayor's designee to execute the Agreement and to exercise all provisions contained therein, including the termination provisions.

The foregoing resolution was offered by Commissioner **Marleine Bastien** , who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	absent		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	absent	Keon Hardemon	absent
Danielle Cohen Higgins	aye	Eileen Higgins	absent
Kionne L. McGhee	aye	Raquel A. Regalado	absent
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of November, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Annery Pulgar Alfonso

**PARKS, RECREATION AND OPEN SPACES DEPARTMENT
NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT
RICKENBACKER CAUSEWAY BOND ENGINEERING SERVICES**

**CONTRACT NO. E20-PROS-03
January 2023**



Daniella Levine Cava, Mayor

BOARD OF COUNTY COMMISSIONERS

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Marleine Bastien
District 2
Keon Hardemon
District 3
Micky Steinberg
District 4
Eileen Higgins
District 5
Kevin Marino
Cabrera
District 6
Raquel Regalado
District 7

Danielle Cohen Higgins
District 8
Kionne McGhee
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Anthony Rodriguez, Vice
Chairman
District 10
Roberto J. Gonzalez
District 11
Juan Carlos Bermudez
District 12
Rene Garcia
District 13

**Luis G. Montaldo, Clerk AD Interim
Abigail Price-Williams, County Attorney
Miami-Dade County provides equal access and equal opportunity
In employment and services and does not discriminate on the basis of handicap.**

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Parks, Recreation and Open Spaces Department

NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT
RICKENBACKER CAUSEWAY BOND ENGINEERING SERVICES
CONTRACT NO. E20-PROS-03

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ATTACHMENTS

ATTACHMENT A – PERSONNEL CLASSIFICATIONS INFORMATION

ATTACHMENT B – TRUTH-IN-NEGOTIATION CERTIFICATE

NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

THIS NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20__ by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and HNTB Corporation, a Delaware corporation authorized to do business in the State of Florida with offices in Miami, Florida, hereinafter referred to as the "CONSULTANT".

W I T N E S S E T H :

For and in consideration of the mutual agreements hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide the professional services prescribed herein in connection with the Rickenbacker Causeway Bond Engineering Services, Contract No. E20-PROS-03, as more specifically described in SECTION II- PROFESSIONAL SERVICES of this Agreement for the Rickenbacker Causeway Facility, hereinafter referred to as the "PROJECT".

SECTION I - COUNTY OBLIGATIONS

The COUNTY agrees that the Miami-Dade County Parks, Recreation and Open Spaces Department, hereinafter referred to as the "Department", shall furnish to the CONSULTANT any plans and other data available in the COUNTY files pertaining to the work to be performed under this Agreement. Information shown on such plans or data shall be that which has been made available to the COUNTY, and shall be provided to the CONSULTANT without guarantee regarding its reliability and accuracy. The CONSULTANT shall be responsible for independently verifying such information if it shall be used by the CONSULTANT to accomplish the work undertaken pursuant to this Agreement.

The Director of the Department or his/her designee, hereinafter referred to as the "Director", reserves the right to guarantee the accuracy of information provided by the COUNTY to the CONSULTANT. When such guarantee is provided in writing, the CONSULTANT shall not be compensated for independent verification of said information.

The Director shall issue written authorization to proceed to the CONSULTANT for each section of the work to be performed hereunder. These authorizations are referred to as Work Orders. In case of emergency, the Director reserves the right to issue oral authorization to the CONSULTANT with the understanding that written confirmation shall follow immediately thereafter.

The CONSULTANT shall submit a proposal, in a form acceptable to the COUNTY, upon the Director's request prior to the issuance of a Work Order. No payment shall be made for the CONSULTANT's time or services in connection with the preparation of any such proposal.

The Director shall confer with the CONSULTANT before any Work Order is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to this Agreement.

The Director reserves the right to assign the CONSULTANT's design work to another CONSULTANT, including but not limited to a CONSULTANT on a previous, successor or concurrent contract and further reserves the right to assign another CONSULTANT's design work to CONSULTANT. CONSULTANT shall not be responsible for the design work assigned to another CONSULTANT if the design work is not 100% completed by the CONSULTANT and submitted as final documents by the CONSULTANT and accepted by the COUNTY.

Performance evaluations of the services rendered under this Agreement shall be performed by the Department and shall be utilized by the COUNTY as evaluation criteria for future solicitations.

SECTION II – PROFESSIONAL SERVICES

Upon receipt of authorization to proceed from the Director, the CONSULTANT agrees to perform professional services associated with the requested work in accordance with the negotiated terms of the applicable Work Order.

Said services may include, but not be limited to: Bond engineering services, management financial consulting services, and any supportive tasks ancillary to the primary scope of services as detailed on the E20-PROS-03 Request for Price Proposals and all applicable Addenda.

In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Provide complete engineering services to: Maintain an adequate staff of qualified personnel on the project at all times to complete the scope in accordance with the terms specified in the applicable Work Order. The COUNTY has the right to approve and regulate the CONSULTANT's workforce and approve specific CONSULTANT employees. The COUNTY has the right to have any CONSULTANT employee removed from the work, if, in the COUNTY's sole judgment, such employee's conduct or performance is detrimental to the project. The CONSULTANT shall not replace any employee in the team initially proposed by the CONSULTANT without prior COUNTY approval. The CONSULTANT shall submit a list of employees intended to be engaged in the work under this Agreement, including their classification and salary rates, as reported to the Internal Revenue Service (I.R.S.).
- B. Comply with all federal, state and local laws, regulations, codes, ordinances, resolutions and administrative orders applicable to the work.
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work.
- D. Report the status of the work to the Director upon request and hold pertinent data, calculations, field notes, records, sketches, and other products open to the inspection of the Director at any

time. The CONSULTANT shall reference all correspondence and work with the Work Order Number.

- E. Submit for COUNTY review, work schedules, cost estimates, design computations, drawings, sketches, and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable Work Order, as applicable. Submit for COUNTY approval the final work products upon incorporation of any modifications requested by the COUNTY during any previous review. Drawings shall be in AutoCAD format in a version acceptable to the Department. Upon finalization of work the CONSULTANT shall submit hard copy reproducible as well as editable final product disks to the Department.
- F. Confer with the COUNTY at any time during the further development and implementation of improvements for which the CONSULTANT has provided design or other services as to interpretation of plans and other documents, correction of errors and omissions and preparation of any necessary revisions thereof. The CONSULTANT shall not be compensated for the correction of CONSULTANT'S errors and omissions.
- G. Complete a preliminary check of any documents submitted for compliance with all county, city, state, and federal agencies as required prior to final approval of work by the Director.
- H. Make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying the COUNTY and securing its consent in writing. The CONSULTANT also agrees that it shall not publish, copyright, or patent any of the data furnished in compliance with this Agreement, that being understood that under SECTION X – OWNERSHIP OF DOCUMENTS hereof such data or information is the property of the COUNTY.

SECTION III – TIME FOR COMPLETION

The services to be rendered by the CONSULTANT are for five (5) years from the effective date of this Agreement, excluding Warranty Administration Period. This Agreement shall remain in full force and effect for five (5) years after its date of execution or until completion of all project phases, whichever occurs last, unless terminated by mutual consent of the parties hereto.

A reasonable extension of time shall be granted in the event there is a delay on the part of the COUNTY in fulfilling its part of the Agreement or should a Force Majeure, as defined in Section IV hereof, render performance of the CONSULTANT's duties impossible. Such extensions of time shall not be cause for any claim by the CONSULTANT for extra compensation.

SECTION IV– FORCE MAJEURE

Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of sub-consultants/subcontractors, third-party consultants/contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligation of the party or parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said

unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party or parties.

SECTION V – COMPENSATION

The COUNTY agrees to pay and the CONSULTANT agrees to accept a fee representing full compensation for the performance of the services specified herein. The CONSULTANT shall submit monthly invoices for all Work in progress using a format and procedure provided by the Department and in accordance with the Prompt Payment Ordinance No. 94-40. Invoices shall be submitted within one hundred twenty (120) days of the performance of the service being billed. The COUNTY shall not pay invoices that are not properly submitted within that period. Additionally, the COUNTY may withhold payment of any invoices from the CONSULTANT if the COUNTY determines that the CONSULTANT submitted and received payment of an inaccurate invoice, without limitation to any other legal or equitable remedies. Fees and other compensation will be computed in accordance with one or a combination of the methods outlined in subsections A, B and C below as specified in a written task authorization to proceed approved by the Director or the Director's designee:

A. Fee for Professional Services as a Multiple of Direct Salary Cost and Fixed Hourly Rate:

1. The fee for professional services rendered by the CONSULTANT'S employees, principals excluded, shall be computed based on the direct salary cost, as reported to the Internal Revenue Service, excluding bonuses or awards if applicable, for the time of said employee engaged directly in the Work times a negotiated multiplier of 2.85 for Office Employees, 2.5 for the CONSULTANT'S employees working in COUNTY offices and 2.2 for all Field Employees. Invoicing by the CONSULTANT for persons not specifically provided for above shall be prohibited without the advance written approval of the Director for good cause shown and documented in the project file. The Director shall approve such invoicing only in the event that it is necessary to address unique project needs. Office Personnel shall mean personnel that are located in the home offices of the CONSULTANT and/or Subconsultant(s), when such home offices provide office space. Field Personnel shall mean personnel that are performing duties in the field or outside of the home offices of the CONSULTANT and/or Subconsultant, and at offices of the COUNTY for more than thirty (30) days, but not considered permanent. This fee shall constitute full compensation to the CONSULTANT for costs incurred in the performance of the Work, such as salaries of all employees including clerical staff, overhead, fringe benefits, operating margin and all other costs not covered by reimbursable expenses. Clerical staff is defined to include secretarial, word processing and staff performing administrative functions. In no case, except for Technical Expert/Specialty Consultant, shall the maximum rate of compensation, including multipliers of direct salary, exceed two hundred- eighty dollars (\$280.00) per hour for the CONSULTANT and Subconsultant(s). Furthermore, the maximum raw hourly rates (before the multiplier) are capped and shall not exceed the following:

Senior Project Manager	\$ 98.00
Senior A/E Staff	\$ 84.00
A/E Staff	\$ 60.00
Clerical, Document Control Staff	\$ 42.00

Rates for Technical Expert/Specialty Consultant shall be negotiated and approved by Director or Director's designee. The COUNTY has the right to verify the rates and multipliers used in this AGREEMENT through an audit. No escalation will be permitted. Compensation to CONSULTANT shall be limited by the multipliers, maximum rate of compensation, and maximum raw hourly rates set forth for the CONSULTANT in this Section. Invoicing by the CONSULTANT for services in excess of this limitation shall be prohibited without the advance written approval of the Director for good cause shown and documented in the project file. The Director shall approve such invoicing only in the event that it is necessary to address unique project needs.

2. For employees that are on an hourly basis and are required to be paid overtime, compensation for overtime Work considered necessary and previously authorized in advance by the Director or the Director's designee in writing shall be computed with a multiplier of 1.1 times the overtime rate and number of hours ($1.1 \times \text{overtime rate} \times \text{number of hours of overtime}$). Principals and all salaried employees shall not receive additional compensation for performance of overtime Work. Overtime is defined as Work in excess of forty (40) hours per week. The multiplier rate in Section V.A.1 does not apply.
- 3) Labor rates (Direct Salaries) shall be in accordance with the list of employees and rates supplied by the CONSULTANT and its Subconsultant(s), and made a part hereof as Attachment "A" and shall be consistent with prevailing local wage rates paid for similar

Work to similar employee classifications and subject to approval by the Director or the Director's designee prior to starting Work.

- 4) The CONSULTANT and its Subconsultant(s) shall not invoice the COUNTY for charges for office, rent or overhead expenses of any kind including, but not limited to: insurance, local telephone (including cellular service) and utility charges, office/drafting supplies, depreciation of equipment, professional dues, subscriptions, customary computer software/hardware, reproduction of drawings and/or specifications, mailing, stenographic, or clerical work. Nor shall the CONSULTANT invoice for employee time not directly related to the Work or travel and subsistence not directly related to the Work. The multiplier factor set forth in Section V.A.1. above shall cover all such costs pertinent to the Work
- 5) All payments to Subconsultant(s) employed hereunder shall be the sole responsibility of the CONSULTANT unless otherwise provided for herein or within a written task authorization to proceed. The CONSULTANT shall not submit invoices, which include charges for services by Subconsultant(s), unless such services have been performed satisfactorily and the charges are, in the opinion of the CONSULTANT, payable to such Subconsultant(s).
- 6) The CONSULTANT shall promptly make all payments to such Subconsultant(s) following receipt by the CONSULTANT of corresponding payment from the COUNTY. Prior to any payments to Subconsultant(s), the CONSULTANT shall, if requested by the Director or the Director's designee, furnish to the COUNTY a copy of the agreement(s) providing for such payments. Compensation rate to Subconsultants(s) authorized by the Director as services shall not exceed the CONSULTANT'S rates referenced above unless otherwise approved in advance by the Director or the Director's designee.

7) The CONSULTANT and its Subconsultant(s) shall be compensated at the flat rate of Two Hundred dollars (\$200.00) per hour for the time a Principal(s) is/are engaged directly in the Work. This rate shall not be subject to the negotiated multiplier. The Director reserves the right to substitute Principals in its sole discretion upon request by the CONSULTANT.

8) Not To Exceed: Under this compensation, the CONSULTANT is compensated for the actual time of personnel engaged directly in performing services under this AGREEMENT. A not to exceed cap for the total fee for each assignment given under this compensation basis may be established prior to the issuance of the task authorization to proceed. The compensation method shall be in accordance with the compensation schedule as shown in Section V.A.1 of this AGREEMENT.

B. Lump Sum Fee: The fee for any requested portion of Work may be, at the option of the Department, a lump sum mutually agreed upon by the Director or the Director's designee and the CONSULTANT. The lump sum fee will be estimated based on the direct salaries times the negotiated multiplier times the hours per employee. Designated lump sum fees shall be stated in the written task authorization to proceed. Lump sum fees shall NOT include any reimbursable expenses, which must be separately accounted and paid on the basis of original receipts and actual costs.

C. Reimbursable Expenses: The CONSULTANT may be compensated on a direct reimbursement basis for certain Work-related expenditures not covered by fees for engineering services, provided such expenditures are reasonable and previously authorized by the Director or the Director's designee in writing. Reimbursable expenses typically are not considered the cost of doing day-to-day business and may include:

- 1) Expenses for laboratory tasks and analyses, permitting fees, printing and reproduction costs, rental or purchase of specialized equipment, software licenses and instruments necessary for the efficient performance of the Work, provided that such equipment and instruments become the property of the COUNTY upon Work completion.
- 2) Expenses for travel (except commuting)-the CONSULTANT shall claim no more in expenses for travel, transportation, and subsistence than would be allowed an “authorized person” pursuant to the terms of Section 112.061, Florida Statutes, and the County’s Administrative Orders 6-1 and 6-3, as presently written or hereafter amended. No such expenses shall be approved without the prior written consent of the Director or the Director’s designee. For the purposes of this Section, the principal place of business shall be considered the CONSULTANT’S local corporate headquarters. Failure to obtain such prior authorization shall be grounds for nonpayment of such expenses. To be compensated, the CONSULTANT shall maintain accurate records in a format and procedure provided by the Department, and the CONSULTANT shall submit said records with their invoices.
- 3) Reimbursable expenses of the CONSULTANT and approved Subconsultants shall be identified on a direct cost basis. Mark-ups as a percentage of salary costs are not permissible and will not be reimbursed or paid.
- 4) The CONSULTANT shall be required to submit original receipts of all reimbursable expenses for task authorizations to proceed issued on a time and material basis and lump sum.
- 5) Items not listed shall be reviewed on a case-by-case basis and shall require approval in advance by the Director or the Director’s designee.

D. Maximum Compensation: The total of all payments to the CONSULTANT pursuant to this AGREEMENT shall not exceed Two Million dollars (\$2,000,000 _____.00), excluding contingencies for an effective term of five years with a Five (5) year option to renew. No minimum amount of compensation is guaranteed to the CONSULTANT. Maximum Compensation may not be increased for the entire duration of the AGREEMENT without approval by the Mayor or Mayor's designee in accordance with his powers granted under Section 2-8.2.12 or if beyond such authority, through written amendment approved by the Board of County Commissioners.

E. Contingency Allowance Account: In the event that a contingency necessitates the performance of services or additional services by the CONSULTANT after the Two Million dollars (\$2,000,000.00) maximum compensation limit of the AGREEMENT has been encumbered, the Director or the Director's designee shall have the right to authorize performance of additional services, provided that compensation for such services does not exceed ten percent (10%) of the AGREEMENT maximum compensation limit which maximum contingency allowance amount shall be Two hundred thousand dollars (\$200,000.00). Before any additional services are begun, a task authorization to proceed from the Director shall be given to the CONSULTANT. The task authorization to proceed must clearly identify, explain and justify the reason for the additional services. The CONSULTANT shall have no entitlement to any of these funds. The COUNTY retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from this Allowance Account remain the property of the COUNTY.

F. Compensation for Other Services (IF APPLICABLE):

Surveying and Testing Services: In the event surveying and testing services are required during the Project and such work is authorized by the Director or his designee, the CONSULTANT shall be compensated for performance of said work and the rates shall not exceed the negotiated rates under the latest Miami-Dade County contract and schedule of payment.

G. Truth-In-Negotiation Certification of Wage Rates: Attached hereto as Attachment "B" is the Truth-in-Negotiation Certificate required by Administrative Order 3-39 and Section 287.055(5)(a), Florida Statutes. The CONSULTANT hereby certifies and agrees that wage rates and other factual unit costs, as submitted in support of the compensation provided in this Section, are accurate, complete and current as of the date of this AGREEMENT. It is further agreed that said compensation shall be adjusted to exclude any significant costs where the COUNTY shall determine that the price of services was increased due to inaccurate, incomplete or unclear wage rates or other factual unit costs. All such compensation adjustments shall be made within one (1) year from the date of final billing or acceptance of the Work by the COUNTY, whichever is later. The COUNTY reserves the right to request a certified copy of the CONSULTANT'S payroll at any time during the term of this agreement.

H. County Discretion To Negotiate: Notwithstanding and prevailing over any other provision of this AGREEMENT, the COUNTY reserves the right in its sole discretion, through the Director or the Director's designee, to negotiate fees and rates with the CONSULTANT, mutually acceptable to the COUNTY and the CONSULTANT, that are less than those set forth herein for particular projects, including but not limited to, a lower multiplier and hourly rates.

SECTION VI – ADDITIONAL SERVICES (ALLOWANCE ACCOUNT)

In the event that a contingency necessitates the performance of additional services by the CONSULTANT after the Two Million Dollar maximum compensation limit of the Agreement has been encumbered, the Director shall have the right to authorize performance of additional services provided that compensation for such services does not exceed ten percent (10%) of the Agreement's maximum compensation limit or \$200,000.00. It is understood that any unspent portion of the allowance account is to remain with the COUNTY.

SECTION VII – METHODS OF PAYMENT

The COUNTY agrees to make monthly or partial payments to the CONSULTANT, in accordance with Prompt Payment Ordinance No. 94-40, currently in effect or as amended in the future, for all authorized work performed during the previous calendar month or other mutually agreed invoicing period. The CONSULTANT is responsible to submit invoices that do not contain charges that are more than 120 days old. In the case where disallowed charges are found, the COUNTY may return the entire invoice for correction and resubmittal. The CONSULTANT agrees to provide all records necessary to substantiate payment request to the COUNTY. Payments shall be made in accordance with the following methods:

A. Time and/or material for Professional Fees and/or Reimbursable Expenses

(1) The CONSULTANT shall submit the invoice in a format provided by the Department. Each invoice shall reference the particular authorization to proceed that authorized the services and shall include a status report describing work completed.

(2) With each invoice, the CONSULTANT shall submit a "Utilization Report" form in accordance with the Regulatory and Economic Resources Department's requirements. Invoices shall not be considered valid without said form.

(3) The amount of the invoice submitted shall be comprised of the amounts due for all services performed and reimbursable expenses incurred during the previous calendar month or mutually agreed invoicing period to date in connection with authorized work. The amounts due for professional services and reimbursable expenses shall be calculated in accordance with Section V, Compensation, hereof, respectively. Invoiced reimbursable expenses must be substantiated by original receipts and other documentation as necessary.

B. Lump Sum Fee

(1) The CONSULTANT shall submit the invoice in a format provided by the Department. Each invoice shall reference the particular task order authorization to proceed which authorized the services and shall include a status report describing work completed.

(2) With each invoice, the CONSULTANT shall submit a "Utilization Report" form in accordance with the Regulatory and Economic Resources Department's requirements. Invoices shall not be considered valid without said form.

(3) The amount due on the invoice shall be calculated by applying the percentage of the total work completed to date to the authorized lump sum and subtracting any previous billings.

(4) Payments shall be calculated on a percentage of work completed.

SECTION VIII – SCHEDULE OF WORK

The Director shall have the sole right to determine on which parts or phases of the work the CONSULTANT shall proceed and in what order. The Work Order(s) issued by the Director shall cover in detail the scope, specific deliverables, time for completion, method of payment and compensation for the professional services requested in connection with each part or phase of work.

SECTION IX – RIGHT OF DECISIONS AND DISPUTE RESOLUTION

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Director who shall decide all questions, difficulties, and disputes of whatever nature which may arise

under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder, and the character, quality, amount and value thereof.

In the event the CONSULTANT and COUNTY are unable to resolve their differences concerning any determination made by staff or any dispute or claim arising under or relating to the Contract, either the CONSULTANT or COUNTY may initiate a dispute in accordance with the procedure set forth in this Section. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

The parties to this contract hereby authorize the Public Works and Waste Management Director, functioning as the Contracting Officer or his/her designee, to decide all questions, disputes or claims of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract and this decision shall be conclusive, final and binding on the parties, subject only to the limited right of review specified below. The parties hereto further agree that, upon timely request under this Section, both the CONSULTANT and COUNTY are entitled to a hearing before the Contracting Officer, or his/her designee, at which both CONSULTANT and the COUNTY may present evidence and live testimony, in accordance with the Florida Rules of Evidence, and the right to cross-examine each other's witnesses.

If either party wishes to protest the determination of the Contracting Officer, such party may commence an appeal in a Court of competent jurisdiction no later than 30 calendar days from the issuance of the Contracting Officer's written decision, it being understood that the review of the Court shall be limited to the question of whether or not the Contracting Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

Pending final decision of a dispute hereunder, the CONSULTANT shall proceed diligently with the performance of the Contract and in accordance with the COR's interpretation.

SECTION X – OWNERSHIP OF DOCUMENTS

All notes, correspondence, documents, designs, drawings, cost estimates, renderings, calculations, specifications, models, photographs, reports, surveys, investigations, and any other documents and copyrights thereto for Services performed or produced in the performance of this Agreement, whether in paper or other hard copy medium or in electronic medium, except with respect to copyrighted standard details and designs owned by the CONSULTANT or owned by a third party and licensed to the CONSULTANT for use and reproduction, shall become the property of the COUNTY without restrictions or limitations. However, the COUNTY may grant an exclusive license of the copyright to the CONSULTANT for reusing and reproducing copyrighted materials or portions thereof as authorized by the COUNTY in advance and in writing. In addition, the CONSULTANT shall not disclose, release, or make available any document to any third party without prior written approval from COUNTY. The CONSULTANT shall warrant to the COUNTY that he/she has been granted a license to use and reproduce any standard details and designs owned by a third party and used or reproduced by the CONSULTANT in the performance of this Agreement. All drawings shall be AutoCAD format in a version acceptable to the Department, produced by computer in files maintained on disks. When each individual section of work requested pursuant to this Agreement is completed and accepted, all of the above data shall be delivered to the Director. Nothing contained herein shall be deemed to exclude any document from Chapter 119 of the Florida Statutes.

SECTION XI – REUSE OF DOCUMENTS

The CONSULTANT may reuse data where appropriate from other sections of the work included in this Agreement provided irrelevant material is deleted. The COUNTY shall not be re-invoiced for such reused data. The Director shall not accept any reused data containing an excess of irrelevant material, which has no connection with the applicable portion of the work. The COUNTY

shall not re-use design documents on other projects not contemplated under this Agreement. Any such re-use shall be at the COUNTY's sole risk without legal liability to the CONSULTANT.

SECTION XII – NOTICES

Any notices, reports or other written communications from the CONSULTANT shall be considered delivered when posted by certified mail, electronic media or delivered in person to the Director. Any notices, reports or other communications from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to said CONSULTANT or the CONSULTANT's authorized representative.

SECTION XIII – ABANDONMENT

In the event the COUNTY causes abandonment, cancellation, or suspension of the projects or parts thereof, the CONSULTANT shall be compensated for all services rendered consistent with the terms of this Agreement up to the time the CONSULTANT receives written notification of such abandonment, cancellation or suspension. This compensation shall be determined on the basis of the percentage of the total services which have been performed at the time of the CONSULTANT receives such notice. In the event partial payment has been made for professional services not performed, the CONSULTANT shall return such sums to the COUNTY within ten (10) days after receipt of written notice that such sums are due.

SECTION XIV – AUDIT RIGHTS

The COUNTY reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made. The CONSULTANT agrees to provide copies of any records necessary to substantiate payment requests to the COUNTY, including but not limited to audited

financial statements, balance sheets and other financial records. In the event an audit undertaken pursuant to this section reveals improper, inadvertent, or mistaken payments to the CONSULTANT, the CONSULTANT shall remit such payments to the COUNTY. The COUNTY shall retain all legal and equitable rights with respect to recovery of payments.

SECTION XV – SUBCONTRACTING AND ASSIGNMENT

The CONSULTANT shall not assign or transfer any portion of the work under this Agreement other than as provided for herein without the prior written consent of the Director. When applicable and upon receipt of such consent in writing, the CONSULTANT shall cause the names of firms responsible for portions of each specialty of the work to be inserted in the pertinent documents or data. No assignment or transfer of work will be allowed. Nothing contained in this Agreement shall create any contractual relationship between the COUNTY and the Sub-consultant(s).

In addition, and as applicable, the CONSULTANT agrees to comply with the Miami-Dade COUNTY Ordinance 01-103 and Administrative Order 3-32 regarding the Community Business Enterprise (CBE-A/E) Program. The COUNTY has established a contract measure of **16%** SBE-A&E sub-consultant goal. A. Sub-consultant(s)

The compensation for services rendered by the Sub-consultant(s) shall be in accordance with this Section and Section V - COMPENSATION. The Sub-consultant(s) authorized to perform professional services associated with this Agreement are:

E Sciences Incorporated

Goal Associates, Inc.

Collins Engineering, Inc.

Digital E Consulting, LLC.

In no case the maximum rate of compensation, per classification, including multiples of direct salary for services rendered by the Sub-consultant(s) personnel, principals excluded, shall exceed the rate stipulated, per classification, in Section V of this agreement.

All services provided by the Sub-consultant(s) shall be pursuant to appropriate agreements between the CONSULTANT and the Sub-consultant(s) which shall contain provisions that preserve and protect the rights of the COUNTY under this Agreement, and indemnify and hold harmless the COUNTY.

Sub-consultant(s) other than those listed above may not be utilized on the work unless their utilization has been approved in advance by the COUNTY in writing. The COUNTY reserves the right at any time to withdraw the approval of a Sub-consultant, if it decides that the services performed by the Sub-consultant, are not acceptable to the COUNTY.

The CONSULTANT shall not change any Sub-consultant without prior approval of the COUNTY in response to a written request from the CONSULTANT stating the reasons for any proposed substitution.

SECTION XVI - CERTIFICATION

The CONSULTANT certifies that no companies or persons, other than bonafide employees working solely for the CONSULTANT or the CONSULTANT's COUNTY approved Sub-consultant(s), have been retained or employed to solicit or secure this Agreement or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. The CONSULTANT also certifies that no COUNTY personnel, whether full-time or part-time employees, has or shall be retained or employed in any capacity, by the CONSULTANT or the CONSULTANT's COUNTY approved Sub-consultant(s), to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this Certification, the Director shall have the right to annul this Agreement without liability.

SECTION XVII – TERMINATION OF AGREEMENT

It is expressly understood and agreed that the Director may terminate this Agreement, in total or in part, without cause or penalty, by thirty (30) days prior written notification in writing from the Director or by declining to issue Work Orders, as provided in Section VIII; in which event the COUNTY's sole obligation to the CONSULTANT shall be payment, in accordance with Section V – Compensation, for those units or sections of work previously authorized. Such payment shall be determined on the basis of the hours or percentage of work performed by the CONSULTANT, found acceptable to the COUNTY, up to the time of termination. In the event partial payment has been made for professional services not performed, the CONSULTANT shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. Upon such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.

SECTION XVIII – DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of five (5) years effective term after its date of execution, provided that the maximum compensation set forth in Section V(D) is not reached by the completion of the initial effective term (although actual completion of the services hereunder may extend beyond such term) or until depletion of the funds allocated to pay for the cost of said services, whichever occurs first, unless the contract is terminated by mutual consent of the parties hereto or as provided in Section XIII, Section XVI, Section XVII, Section XIX, Section XXIII, and Section XXV hereof. The performance of specifically and properly authorized services which may extend beyond the Agreement's effective term shall be compensated in accordance to Section V hereof.

This Contract contains a Contingency Allowance time extension not to exceed ten percent (10 %) of the original Contract Duration. Pursuant to a written request by the Consultant for a time extension for reasons exhibited in Sections III and IV, that affects the critical path schedule of the

Contract or any previously approved changes; written documentation that supports the justification of a time extension, review and concurrence by the department A/E, a Contract Contingency Allowance Expenditure Authorization will be created for execution by all parties. Once executed the time extension will adjust the scheduled completion date. The cumulative total of all Contingency Allowance time extensions shall not exceed ten percent (10 %) of the original Contract Duration rounded off to the next whole number.

SECTION XIX – DEFAULT

In the event the CONSULTANT fails to materially comply with the provisions of this Agreement, the Director may declare the CONSULTANT in default by thirty (30) days prior written notification. In such event, the CONSULTANT shall only be compensated for any professional services completed as of the date written notice of default is served. In the event partial payment has been made for such professional services not completed, the CONSULTANT shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. The CONSULTANT shall not be compensated for professional services, which have been performed but not completed by the time the Director declares a default. In the event the COUNTY prevails in litigation to enforce the provisions of the Agreement, the COUNTY shall be compensated by the CONSULTANT for reasonable attorney's fees and court costs.

Scrutinized Companies - By executing this Agreement through a duly authorized representative, the CONSULTANT certifies that the CONSULTANT is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. The County shall have the right to terminate this Agreement for default if the CONSULTANT is found to have submitted a false certification or to have been, or is subsequently

during the term of the Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

SECTION XX – INDEMNIFICATION AND INSURANCE

Consultant, in accordance with Section 725.08, Florida Statutes, shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Consultant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Consultant agrees and recognizes that the Owner shall not be held liable or responsible for any claims, which may result from any negligent reckless, or intentionally wrongful actions, errors or omissions of the consultant in which the Owner participated either through review or concurrence of the Consultant's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Consultant, the Owner in no way assumes or shares any responsibility or liability of the Consultant or Sub-consultants, the registered professionals (architects and/or Consultant s) under this agreement.

The CONSULTANT shall not commence any work pursuant to this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the COUNTY's Risk Management Division.

The CONSULTANT shall furnish to the Miami-Dade County, c/o Miami-Dade Parks, Recreation and Open Spaces Department, Contract Section, 275 NW 2st Street, 4th Floor, Miami,

Florida 33128 Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude coverage for Products and Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

**NOTE: CERTIFICATE HOLDER
MUST READ:**

**MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340**

MIAMI, FL 33128

Compliance with the foregoing requirements shall not relieve the CONSULTANT of the liabilities and obligations under this Section or under any other portion of this Agreement, and the COUNTY shall have the right to inspect the original insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverages.

SECTION XXI – TRUTH-IN-NEGOTIATION CERTIFICATION OF WAGE RATES

Pursuant to AO 3-39 and Florida State Statutes Chapter 287.055 5(a): For all lump sum costs or costs plus a fixed fee contract in which a fee will exceed one hundred fifty thousand dollars (\$150,000; 287.017 -category four), the COUNTY will require the firm receiving the award to execute a Truth-In-Negotiation Certificate as required by Chapter 287, Florida Statutes. The language below suffices as the Truth-In-Negotiation Certificate when included in a contract in which a fee will exceed the above-referenced amount:

In accordance with Florida Statute 287.055 5(a), the CONSULTANT hereby certifies and warrants that wage rates and other factual unit costs, as submitted in support of the compensation provided in Section V, are accurate, complete and current as of the date of this Agreement. It is further agreed that said compensation shall be adjusted to exclude any significant costs where the COUNTY shall determine that the price of services was increased due to inaccurate, incomplete or unclear wage rates or other factual unit costs. All such compensation adjustments shall be made within three (3) years from the date of final billing or acceptance of the work by the COUNTY, whichever is later.

SECTION XXII – APPLICABLE LAWS

The CONSULTANT agrees to abide and be governed by all Applicable Laws. Applicable Laws shall mean, whether singular or plural, all federal, state, county and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Agreement, any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws and rules may be amended

from time to time. Applicable local laws and ordinances include but are not limited to the following, all as they may be amended from time to time:

Ordinance No. 72-82 (Conflict of Interest), as amended by Ordinances 00-01,00-46.

- A. The CONSULTANT shall comply with the requirements of MDC Code Sections 2-10.4.01 and 10-38, and Implementing Order No. 3-32; COMMUNITY BUSINESS ENTERPRISE (CBE-A/E) PROGRAM FOR THE PURCHASE OF ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR SURVEYING AND MAPPING SERVICES.
- B. The CONSULTANT shall comply with the requirements of MDC Code Section 2-1076 – Office of the Miami-Dade County Inspector General (IG)
- C. The CONSULTANT shall comply with the procedures contained in the FALSE CLAIMS Ordinance MDC Code Article XV Sections 21-255 through 21-266; prohibiting presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County; requiring forfeiture of any claim containing false or fraudulent allegations or statements; imposing penalties for submission of false or fraudulent claims; providing both county and private enforcement.
- D. The CONSULTANT shall comply with the financial disclosure requirements of Ordinance No. 77-13, as amended, by having on file or filing within thirty (30) days of the execution of this Agreement one of the following with the Supervisor of the Miami-Dade County Elections Department, P.O. Box 521550, Miami, FL 33152-1550:
 - (1) A source of income statement;
 - (2) A current certified financial statement;
 - (3) A copy of the CONSULTANT'S Current Federal Income Tax Return.
- E. E-VERIFY - The attention of the Consultant is hereby directed to the requirements of the State of Florida Office of the Governor Executive Order No. 11-02. The Consultant hereby agrees to utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the

terms governing use of the system, to confirm the employment eligibility of all persons assigned or authorized by the Consultant to perform work pursuant to the Contract with the County.

F. Ordinance 07-65 (Sustainability Building Program) – IF APPLICABLE - The primary mechanism for determining compliance with the Sustainable Building Program shall be the U. S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) Rating System. All construction projects are required to meet the standards delineated in Ordinance 07-65. Compliance shall be determined by completing a formal certification process with the U.S. Green Building Council, or as otherwise directed by the County’s Sustainability Manager.

1. New Construction (NC): All new construction projects shall be required to attain “Silver” or higher level rating under the LEED-NC Rating System.
2. Major Renovations and Remodels: All major renovations and remodels shall attain “Certified” or higher level rating under the LEED-NC Rating System.
3. Non-Major Renovations and Remodels: All non-major renovations and remodels shall attain “Certified” or higher level rating under the appropriate LEED Rating System such as LEED-NC, LEED-Existing Building (EB) or LEED-Commercial Interior (CI).
4. Renovations, remodels, and other building upgrades not meeting the above criteria are encouraged to incorporate the maximum number of LEED approved green building practices as are feasible from a practical and fiscal perspective; however, LEED certification will not be required.

G. Energy Efficient Building Tax Credit (IF APPLICABLE) – The Energy Policy Act (EP Act) of 2005 (Section 1331) as established IRS Section 179D, allows taxpayers to accelerate depreciation on the cost of qualified energy efficient commercial building property placed-in-service after December 31, 2005. This incentive was recently extended by the Emergency Economic Stabilization Act of 2008, to include improvements placed-in-service before January

1, 2014. The returns may be amended going back three tax years, so projects that come on line in 2007 or afterwards are eligible.

The Consultant is designated as the Designer/Construction Manager (“the Designer”) for the energy efficient improvements incorporated in the Energy Consumption Reduction Project (“the Project”) for:

1. The purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the “Code”).
2. If County and the Internal Revenue Service (IRS) determine that the Consultant is eligible and shall receive accelerated depreciation benefits as a “Designer” for the purposes of Section 179D of the Code or that the Consultant shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, the Consultant hereby agrees to discount its contract price or provide a cash rebate to County (the determination of rebate versus discount to be determined by County in its sole discretion) in an amount equal to the total financial benefit realized by the Consultant; at the time the financial benefit to the Consultant becomes ascertainable.
3. County reserves the right to retain a third party consultant (the “Consultant”) –to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the “Consultant” as the “Designer” of the energy efficient improvements for the purposes of Section 179D of the Code.
4. The County agrees to cooperate in all reasonable respects with the Consultant’s efforts to obtain and monetize any such benefits derived from the Project on behalf of County.

SECTION XXIII – OFFICE OF MIAMI-DADE COUNTY INSPECTOR GENERAL

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits,

inspections, and reviews of all County/Trust contracts. This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor/Consultant under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless, as stated in the Special Conditions, this Contract is federally or state funded where federal or state law or regulations preclude such a charge. The Contractor/Consultant shall in stating its agreed process be mindful of this assessment, which will not be separately identified, calculated or adjusted in the proposal or bid form. The audit cost shall also be included in all change orders/amendments and all contract renewals and extensions.

The Miami-Dade Office of Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials in order to ensure compliance with contract specifications and to detect fraud and corruption.

Upon ten (10) days written notice to the (Contractor/ Vendor/ Consultant) shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General shall have the right to inspect and copy all documents and records in the (Contractor/Vendor/Consultant's) possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files,

change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

The (Contractor/ Vendor/ Consultant) shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

1. If this contract is completely or partially terminated, the (Contractor/ Vendor/ Consultant) shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
2. The (Contractor/ Vendor/ Consultant) shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

The provisions in this section shall apply to the (Contractor/Vendor/Consultant), its officers, agents, employees, subcontractors/subconsultants and suppliers. The (Contractor/Vendor/Consultant) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (Contractor/Vendor/Consultant) in connection with the performance of this contract.

Nothing in this section shall impair any independent right to the County to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the (Contractor/Vendor/Consultant) or third parties.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Trust; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Trust may authorize the inclusion of the fee assessment of one-quarter (1/4) of one percent in any exempted contract at the time of award.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Trust contracts including, but not limited to, those contracts specifically exempted above.

INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL (IPSIG): The attention of the Contractor/Consultant is hereby directed to the requirements of AO 3-20 and R-516-96; the County shall have the right but not the obligation to retain the services of an independent private-sector inspector general (IPSIG) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Contractor/Consultant and County in connection with this contract/agreement. The scope of services performed by an IPSIG may include, but are not limited to, monitoring and investigating compliance with Contract Specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the contracting and procurement process, including but not limited to project design, establishment of bid specifications, bid submittals, activities of Contractor/Consultant, its officers, agents and employees, lobbyists, County staff and elected officials.

Upon (10) ten days written notice to Contractor/Consultant from an IPSIG, the Contractor/Consultant shall make all requested records and documents available to the IPSIG for

inspection and copying. The IPSIG shall have the right to examine all documents and records in the Contractor's/Consultant's possession, custody or control which, in the IPSIG's sole judgment pertain to performance of the Contract, including but not limited to, original estimate files; change order estimate files; worksheets; proposals and agreements from and with successful and unsuccessful subcontractors/subconsultants and suppliers; all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents, back-charge document; all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.

The provisions in this Section shall apply to the Contractor/Consultant, its officers, agents and employees. The Contractor/Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor/Consultant in connection with the performance of this agreement. Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this Section are neither intended nor shall they be construed to impose any liability on the County by the Contractor/Consultant or third parties.

SECTION XXIV – AFFIRMATIVE ACTION

The CONSULTANT'S Affirmative Action Plan submitted pursuant to Miami-Dade County Code Section 2-8.1.5, as approved by the Internal Services Department, and any update thereof, are hereby incorporated as contractual obligations of the CONSULTANT to Miami-Dade County hereunder. The CONSULTANT shall undertake and perform the affirmative actions specified herein. The Director may declare the CONSULTANT in default of this Agreement for failure of the CONSULTANT to comply with the requirements of this paragraph.

SECTION XXV – PROMPT PAYMENT TO SMALL BUSINESS SUBCONSULTANTS

The CONSULTANT's attention is directed to Miami-Dade County Section 2-8.1.4, providing for expedited payments to small businesses by county agencies and the Public Health Trust; creating dispute resolution procedures for payment of county and Public Health Trust obligations; and requiring the prime contractor to issue prompt payments, and have the same dispute resolution procedures as the COUNTY, for all small business subcontractors. Failure to the prime contractor to issue prompt payment to small businesses, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the county contract or Public Health Trust contract and debarment procedures of the COUNTY.

SECTION XXVI - SANCTIONS FOR CONTRACTUAL VIOLATIONS

Proposal and contract documents shall provide that, notwithstanding any other penalties for firms that have discriminated in violation of Article VII of Chapter 11A of the Code, the COUNTY may terminate the contract or require the termination or cancellation of the sub-consultant contract. In addition, a violation by a respondent or sub-consultant to the respondent, or failure to comply with the Administrative Order (A.O.) 3-39 may result in the imposition of one or more of the sanctions listed in the A.O.

SECTION XXVII – BUSINESS APPLICATION AND FORMS

The CONSULTANT shall be a registered vendor with the COUNTY – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the CONSULTANT to update and file the Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form) with the Department of Procurement Management (DPM), Vendor Assistance Unit for any changes for the duration of this Agreement, including any option years.

The Proposer is responsible for obtaining the Vendor Registration Package, including all affidavits by downloading from the DPM website at www.miamidade.gov or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL 33128.

Section 2-11.1(d) of Miami-Dade County Code, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the COUNTY's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

SECTION XXVIII – ERRORS AND OMISSIONS (AS APPLICABLE)

The COUNTY shall maintain a record of all construction changes that shall be categorized according to the various types, causes, etc. that the COUNTY may determine are useful or necessary for its purposes. Among those categories are construction changes caused by design errors or omissions in the bid documents that were prepared by the CONSULTANT. For the purposes of this contract provision, errors and omissions shall be dealt with differently, as follows:

A. Errors

It is specifically agreed that any construction changes identified by the COUNTY as an error in the bid documents that were prepared by the CONSULTANT may constitute an additional cost to the COUNTY that would not have been incurred

without the error. The CONSULTANT agrees to be responsible for direct damages to the COUNTY, to the extent such damages were caused by the CONSULTANT'S negligence.

B. Omissions

It is further specifically agreed for purposes of this agreement that any construction changes identified by the COUNTY as an omission in the bid documents that were prepared by the CONSULTANT may constitute an additional cost to the COUNTY that would not have been incurred without the omission. The CONSULTANT agrees to be responsible for direct damages to the COUNTY, to the extent such damages were caused by the CONSULTANT'S negligence.

The CONSULTANT shall participate in all negotiations with the contractor related to this section. Such CONSULTANT participation shall be at no additional cost to the COUNTY. Failure by the CONSULTANT to participate in the negotiations with the contractor shall constitute a waiver of CONSULTANT's rights to contest the appropriateness or amount of any settlements or change orders.

To obtain recovery for errors and/or omissions covered in paragraphs A and B above, the COUNTY shall deduct from funds due the CONSULTANT in this or any other contract the CONSULTANT may or will have with the COUNTY up to the amount of the CONSULTANT'S insurance deductible. Should the damages incurred by the COUNTY exceed the CONSULTANT'S insurance deductible, the COUNTY shall look to the CONSULTANT and the CONSULTANT'S insurer for the remaining amount of additional damages incurred by the COUNTY. In executing this agreement, the CONSULTANT specifically agree to the reasonableness of these damage calculations and to the COUNTY'S right to recover same as stated above provided, however, the Parties agree that in no event shall CONSULTANT be responsible for the cost of construction changes to the extent that such changes are determined to be a betterment to the COUNTY. The recovery of additional costs to

the COUNTY under this Section shall not preclude or limit in any way the CONSULTANT'S indemnification obligations to the COUNTY pursuant to Section XX of this Agreement, or preclude or limit in any way recovery for other separate and/or additional damages that the COUNTY may otherwise incur."

SECTION XXIX – ENTIRETY OF AGREEMENT

This writing and its attachments embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

No alteration, change, or modifications of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto, and approved by the Board of County Commissioners.

This Agreement, regardless of where executed, shall be governed by and constructed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

IN WITNESS WHEREOF the parties hereto have executed these presents this _____ day of _____, 20____.

ATTEST:

HARVEY RUVIN, CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____

By: _____
County Mayor

ATTEST

Craig W. Osmer

By:

Corporate Secretary

CONSULTANT COMPANY NAME
HNTB Corporation

By:

James B. Buel
President or Designee

(Corporate Seal)

Approved as to form
and legal sufficiency:

Assistant County Attorney

